

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re: NATURAL MOLECULAR TESTING  
CORPORATION,

Debtor.

Bankr. Case No. 13-19298-MLB

NATURAL MOLECULAR TESTING  
CORPORATION,

Plaintiff,

v.

Adv. Case No. 13-01635-MLB

USDC Case No. C14-1284RSL

CENTERS FOR MEDICARE & MEDICAID  
SERVICES, *et al.*,

Defendants.

ORDER DECLINING TO  
WITHDRAW REFERENCE

This matter comes before the Court on defendants' "Motion for Withdrawal of Reference to the Bankruptcy Court." Dkt. # 1.<sup>1</sup> This particular procedure is an outgrowth of the district courts' and bankruptcy courts' shared jurisdiction over bankruptcy proceedings. Sec. Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1008 (9th Cir. 1997) (noting that Congress granted district courts "original but not exclusive jurisdiction over all bankruptcy proceedings"). A United States district court has power to initially refer all bankruptcy proceedings to a

<sup>1</sup> This matter can be decided on the papers submitted. The parties' requests for oral argument are DENIED.

1 bankruptcy court (28 U.S.C. § 157(a)), and this district has exercised that option through LCR  
2 87(a). A district court also has authority to withdraw the reference in whole or in part for cause  
3 shown. 28 U.S.C. § 157(d). Defendants argue that the reference should be withdrawn and this  
4 action dismissed because the underlying dispute involves the appropriateness of Medicare  
5 payments which must first be determined in an administrative appeals process before it can be  
6 reviewed by the courts.

7 Section 157(d) provides:

8 The district court may withdraw, in whole or in part, any case or proceeding  
9 referred under this section, on its own motion or on timely motion of any party, for  
10 cause shown. The district court shall, on timely motion of a party, so withdraw a  
11 proceeding if the court determines that resolution of the proceeding requires  
consideration of both title 11 and other laws of the United States regulating  
organizations or activities affecting interstate commerce.

12 Regardless of whether a party is seeking a discretionary withdrawal under the first sentence of  
13 § 157(d) or a mandatory withdrawal under the second sentence, the request must be timely made.  
14 Although the statute does not define timeliness, courts generally find that a request for  
15 withdrawal must be made as soon as the requesting party is aware of the grounds for withdrawal  
16 in order to avoid unnecessary expense and delay in the administration of the bankrupt's estate.  
17 See Eide v. Haas, 343 B.R. 208, 213 (N.D. Iowa 2006); U.S. v. Kaplan, 146 B.R. 500, 503 (D.  
18 Mass. 1992); Central Ill. Savings & Loan Assoc. v. Rittenberg Co., Ltd., 70 B.R. 742, 746 (N.D.  
19 Ill. 1987); Boyajian v. DeFusco, 50 B.R. 327, (D.R.I. 1985) (once it becomes apparent that the  
20 "other laws" described in § 157(d) are implicated, "a party has a plain duty to act diligently – or  
21 else, to forever hold his peace."). The Local Rules of this district expressly require that "[a]ny  
22 motion for withdrawal of reference . . . be filed and served promptly after service of any  
23 pleading or document in which the basis for the motion first arises." Local Bankr. R. 5011-1(b).

24 In this case, it was apparent from the beginning of the adversary proceeding that  
25 the appropriateness of reimbursements under Medicare program rules, regulations, and policies  
26

1 was at issue. Defendants, in fact, asserted that very ground in support of a motion to dismiss  
2 filed in the bankruptcy court on January 23, 2014. The motion was denied on its merits. When  
3 plaintiff amended its complaint,<sup>2</sup> defendants again attacked the pleading in the bankruptcy court  
4 (a motion which remains pending) before finally deciding that they should request a withdrawal  
5 of reference on July 22, 2014, seven months after the initial complaint was filed. Nothing  
6 prevented defendants from filing their motion to withdraw reference sooner: instead, they  
7 waited until their chances for a quick dismissal dwindled in the bankruptcy court before seeking  
8 an alternative forum. Defendants have not been diligent, costs and delay have arisen, and the  
9 risk of forum shopping is significant. For all of the foregoing reasons, the Court DENIES the  
10 motion to withdraw reference as untimely.

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12 Dated this 10th day of October, 2014.

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14 Robert S. Lasnik  
15 United States District Judge  
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24 <sup>2</sup> Assuming for purposes of this argument that resolution of plaintiff's new claims will require  
25 consideration of "other laws" under § 157(d), the need for such consideration had already been apparent  
26 for six months. No new ground for withdrawing the reference came into existence as a result of the  
amended pleading. It is therefore inappropriate to evaluate the timeliness of defendants' motion based  
solely on the date on which the amended complaint was filed.